

ROB BONTA
Attorney General of California
DARRELL W. SPENCE, State Bar No. 248011
Supervising Deputy Attorney General
STACEY L. LEASK, State Bar No. 233281
Deputy Attorney General
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 210-6172
Fax: (916) 324-5567
E-mail: Stacey.Leask@doj.ca.gov
*Attorneys for Defendants
California Department of Education, Tony
Thurmond, in his official capacity as the State
Superintendent of Public Instruction, and
State Board of Education*

William Koski, SBN 166061
MILLS LEGAL CLINIC
STANFORD LAW SCHOOL
YOUTH & EDUCATION LAW PROJECT
559 Nathan Abbott Way
Stanford, California 94305-8610
Tel: (650) 724-3718
Fax: (650) 723-4426
Email: bkoski@stanford.edu

Brenda Shum, Esq.,
OR SBN 961146
(admitted *pro hac vice*)
Freya Pitts, Esq., SBN 295878
NATIONAL CENTER FOR YOUTH LAW
1212 Broadway, Suite 600
Oakland, CA 94612
Telephone: (510) 835-8098
Fax: (510) 835-8099
Email: bshum@youthlaw.org
fpitts@youthlaw.org

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO

EMMA C., et al.,

Plaintiffs,

v.

THURMOND, et al.,

Defendants.

3:96-cv-04179-VC

**JOINT STATEMENT REGARDING
PHASE 4**

1 Pursuant to the Court's instructions at the April 19, 2024 Phase 3B evidentiary hearing
2 and the resulting minute entry [Dkt. 2837] for the proceedings held on April 19, 2024, Plaintiffs
3 Emma C. *et al.* (collectively, Plaintiffs) and Defendants California Department of Education
4 (CDE), Tony Thurmond, in his official capacity as the State Superintendent of Public Instruction,
5 and State Board of Education (SBE) (collectively, State Defendants or the State), hereby submit
6 the following joint statement regarding the Court's evaluation of the State's monitoring activities
7 at Phase 4.

8 The Court's order on May 18, 2018 [Dkt. 2387] established a four-phase evidentiary
9 hearing process – whereby the State provides written and testimonial evidence to the Court in
10 separate phases – to evaluate the State's compliance with the Individuals with Disabilities
11 Education Act (IDEA) and the First Amended Consent Decree (FACD), and thereby allow for
12 dissolution of the FACD. Initially, the Court established the four phases as follows: Phase 1 – a
13 review of the State's system for collecting data from school districts; Phase 2 – a review of the
14 State's system for analyzing data and using it to identify school districts that may not be doing an
15 adequate job of educating children with disabilities; Phase 3 – a review of the State's monitoring
16 and enforcement activities; and Phase 4 – a review of the written policies and procedures adopted
17 by the State to memorialize and explain to school districts its monitoring and enforcement
18 systems. The Court indicated that, after each phase, it would issue a ruling explaining whether
19 the State has “established compliance with federal law in the area at issue.” (*Id.*)

20 The parties and the Court have moved through phases 1 through 3. At the conclusion of
21 the Phase 3B hearing on April 19, 2024, the Court asked the parties to confer and file a joint
22 statement as to what Phase 4 should involve. [Dkt. 2837] At the hearing, the Court recognized
23 the substantial submissions thus far in the case and queried whether the original subject of Phase
24 4 – review of the State's written policies and procedures – is necessary in light of the earlier
25 submissions in the case.

26 The parties agree with the Court that it no longer makes sense for the State to prepare
27 additional written policies and procedures given the prior submissions in the case that detail these
28 policies and procedures, and because those policies and procedures are continually evolving and

likely to be refined over time. Accordingly, by this Joint Statement, the parties seek to re-frame Phase 4.

The State's Phase 4 submission will consist of:

- (1) An updated Compliance and Improvement Monitoring (CIM) manual that will include the following:
 - a. The State's plan for the inclusion of IEP implementation data in selection for, and the process of, CIM;
 - b. The State's plan for the inclusion of restraint and seclusion data in selection for, and the process of, CIM; and
 - c. Information regarding small LEAs' selection for monitoring and the updated rubrics for small LEAs; and
- (2) Any other information required by the Court.

As set by the Court and reflected in the minute entry of the proceedings held on February 2, 2024 [Dkt. 2774], the scheduling order with respect to Phase 4 is as follows:

- State Defendants' Phase 4 Submission: due Friday, August 16, 2024;
- Plaintiffs' and the Monitor's Response Submissions re Phase 4: due Friday, September 13, 2024;
- State Defendants' Reply Submission re Phase 4: due Friday, September 27, 2024;
- Phase 4 Evidentiary Hearing: Friday, October 18, 2024, 10:00 a.m.

1 Dated: May 3, 2024

Respectfully submitted,

2 ROB BONTA
3 Attorney General of California
4 DARRELL W. SPENCE
5 Supervising Deputy Attorney General

6 /s/ Stacey L. Leask
7 STACEY L. LEASK
8 Deputy Attorney General

9 *Attorneys for Defendants*
10 *California Department of Education, Tony*
11 *Thurmond, in his official capacity as the*
12 *State Superintendent of Public Instruction,*
13 *and State Board of Education*

14 YOUTH AND EDUCATION LAW PROJECT –
15 STANFORD LAW SCHOOL

16 By: /s/
17 William S. Koski

18 NATIONAL CENTER FOR YOUTH LAW

19 By: /s/
20 Brenda Shum
21 Freya Pitts

22 *Attorneys for Plaintiffs Emma C., et al.*

23 Pursuant to Local Rule 5-1(i)(3) regarding signatures, I, Stacey L. Leask, attest that
24 concurrence in the filing of this document has been obtained from each of the other signatories. I
25 declare under penalty of perjury under the laws of the United States of America that the foregoing
26 is true and correct. Executed this 3rd day of May, 2024, at Alameda, California.

27 /s/ Stacey L. Leask
28 Stacey L. Leask

CERTIFICATE OF SERVICE

Case Name: **Emma C., et al. v. Thurmond,**
et al.

No. **3:96-cv-04179-VC**

I hereby certify that on May 3, 2024, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

JOINT STATEMENT REGARDING PHASE 4

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on May 3, 2024, at San Francisco, California.

B. Sobalvarro

Declarant

B. Sobalvarro

Signature

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